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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

January 26, 2007

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

06od-243
01od-290

OAHU

(1) Sale of Reclaimed (Filled) Land to James Stanley Berry and Mari Ito Berry; and (2) Amend Prior Board Action of August 24, 2001, under Agenda Item D-25, Grant of Term, Non-Exclusive Easement for Seawall and Fill Encroachment; Issuance of Lease for Private, Residential, Non-Commercial Pier to James Stanley Berry and Mari Ito Berry, Kaneohe, Koolaupoko, Oahu; TMK (1) 4-7-30:16 seaward.

APPLICANTS:

James Stanley Berry and Mari Ito Berry, husband and wife, as Tenants by the Entirety, whose mailing address is 47-245 Miomio Loop, Kaneohe, Hawaii 96744.

LEGAL REFERENCE:

Section 171-53, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands located seaward of (1) 4-7-030:016 situated at Kaneohe, Oahu, as shown on the attached map labeled Exhibit A.

AREA:

668 square feet, more or less, to be determined by Department of Accounting and General Services (DAGS) Survey Division.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution: YES _____ NO x

CURRENT USE STATUS:

Unencumbered with encroachments.

CONSIDERATION:

One-time lump sum payment of fair market value to be determined by independent or staff appraiser, subject to review and approval by the Chairperson; provided that if the reclaimed land has been filled in or made with the prior approval of government authorities, and not otherwise filled in or made contrary to the public interest, it may be disposed of at fair market value of the submerged land, but if the reclaimed land has been filled in or made otherwise, it shall be disposed of at the fair market value of the reclaimed or fast land.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The subject reclaimed land was filled before 1974, i.e. prior to the enactment of the environmental assessment law.

DCCA VERIFICATION:

Individuals are not required to register.

APPLICANTS REQUIREMENTS:

Applicants shall be required to:

- 1) Pay for an appraisal to determine one-time payment of fair market value for the reclaimed (filled) land;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost; and
- 3) Pay for the costs of public notice pursuant to section 171-16(d).

REMARKS:

Summary

On August 24, 2001, under agenda item D-25, the Board authorized the issuance of a grant of term, non-exclusive easement for seawall and fill land (reclaimed land), to James Stanley Berry and Mari Ito Berry (applicants). The applicants also requested a lease for a private, non-commercial pier as participants in the Kaneohe Bay Pier Amnesty Program. The pier lease (GL 5776) has been fully executed. With new information available, the applicants now intend to purchase the seawall and fill (reclaimed land) area of the encroachment.

- A) Sale of reclaimed land: During the processing of the easement, the applicants became aware of new information, which would qualify them to purchase the abutting reclaimed land. The information includes an aerial photo taken in 1961

and a permit issued by the US Army Corps of Engineers dated March 27, 1947 issued to the previous owner relating to the dredging of a channel and filling in of the fishpond with the dredge material. Staff reviewed the permit information and determined the permit covered the subject area.

Pursuant to Section 171-53(b), HRS, the Board may sell reclaimed land to the abutting owner if the land was filled as of June 12, 1962 and the Board finds that its disposition is not prejudicial to the best interest of the State, community or area in which such reclaimed land is located. Further, if the reclaimed land was filled in or made with the approval of government authorities and not otherwise filled in or made contrary to the public interest, the reclaimed land is valued as submerged land. Otherwise, it must be valued as reclaimed or fast land.

The Department of Hawaiian Home Lands and the Office of Conservation and Coastal Lands replied to our request for comments memorandum indicating they had "no objections". The Office of Hawaiian Affairs stated " ... provided that the reclaimed lands will be assessed and sold at fair market value, OHA has no further comments at this time."

The applicants have not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions. Staff has no objections to the subject request.

- B) Amend prior Board action: During the mapping process for the encroachment easement, a boat ramp, in addition to the reclaimed land, was found. Since the applicants now intend to purchase the reclaimed land portion, as set forth above, staff recommends the Board amend the character of use from "seawall and fill encroachment" (reclaimed land), as stated in the Board submittal dated August 24, 2001 (Exhibit B) to "boat ramp purposes".

The consideration for the term, non-exclusive easement was paid in full, but the easement has not been executed by the applicant. In view of today's request, staff suggests the Board adopt the unit value (\$/sq. ft.) from the easement appraisal and apply such value to the boat ramp easement.

The consideration for the original easement area of 721 square feet (668 sq. ft. of reclaimed land plus 53 sq. ft. of boat ramp area) was valued by an independent appraisal at \$3,610 or \$5.01 per square foot (rounded). The one time payment for the 55-year non-exclusive boat ramp easement will be determined upon the finalization of the boat ramp area by DAGS Survey Division.

RECOMMENDATION: That the Board, subject to the applicants fulfilling all

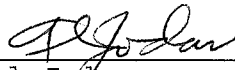
of the applicants' requirements listed above:

1. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1) 4-7-030:016, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
2. Find that the sale of the subject reclaimed land is not prejudicial to the best interest of the State, community or area in which the subject reclaimed land is located.
3. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
4. Authorize the sale of the subject reclaimed land to James Stanley Berry and Mari Ito Berry, covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The grantee shall consolidate the reclaimed land with the grantee's abutting property through the County subdivision process;
 - b. The standard terms and conditions of the most current deed or grant (reclaimed land) form, as may be amended from time to time;
 - c. Review and approval by the Department of the Attorney General; and
 - d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
5. Amend prior action dated August 24, 2001, under agenda item D-25 for the term, non-exclusive easement, further subject to the following conditions:
 - a. Replace "seawall and fill encroachment" with "boat ramp purposes" under Character of Use;
 - b. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 4-7-030:016, provided that when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's

successors or assigns of the insurance requirement in writing, separate and apart from this easement document;

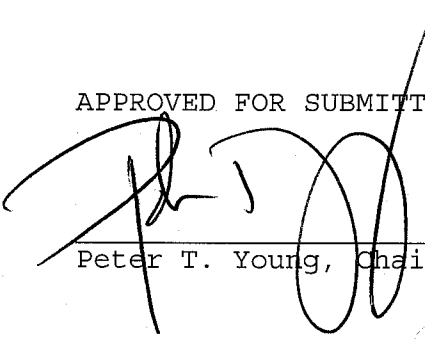
- c. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement;
- d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Al Jodar
Land Agent

APPROVED FOR SUBMITTAL:

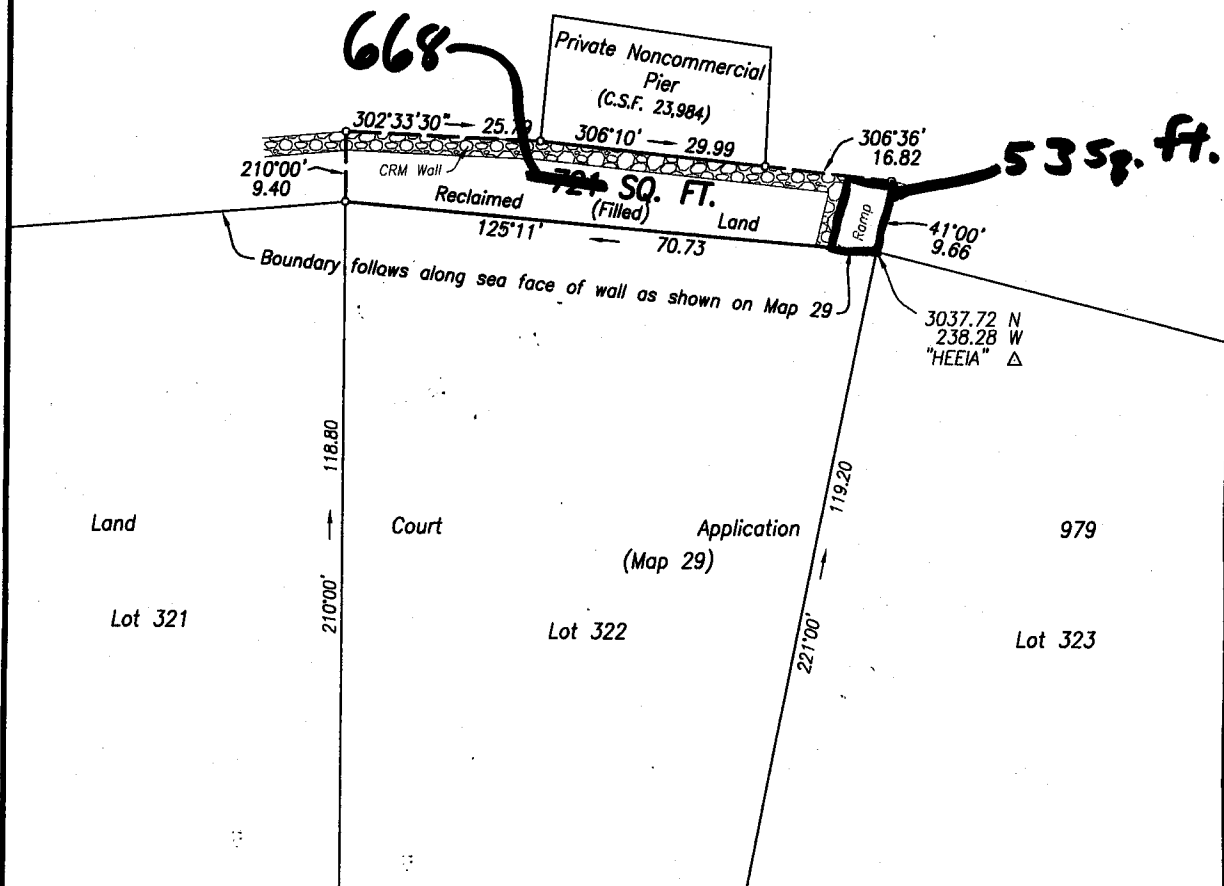


Peter T. Young, Chairperson

TRUE NORTH
SCALE: 1 in. = 20 ft.

KANE O H E

B A Y



NON-EXCLUSIVE SEAWALL AND FILL EASEMENT

Fronting Lot 322 of Land Court Application 979

Kahaluu, Koolaupoko, Oahu, Hawaii

JOB 0-04(05)

C. BK.

Scale: 1 inch = 20 feet

Fronting Parcel 16 of TMK: 4-7-30

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

C.S.F. NO. 23,983

JGL February 14, 2004

EXHIBIT "A"

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

D-25

August 24, 2001

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

OAHU

Grant of term, non-exclusive easement for seawall and fill encroachment; Issuance of lease for private residential non-commercial pier to James Stanley Berry and Mari Ito Berry, Kaneohe, Koolaupoko, Oahu TMK (1) 4-7-030:016 seaward.

APPLICANT:

James Stanley Berry and Mari Ito Berry, husband and wife, as Tenants by the Entirety, whose mailing address is 47-245 Miomio Loop, Kaneohe, Hawaii 96744.

LEGAL REFERENCE:

Section 171-13, 53(c), Hawaii Revised Statutes, as amended and Act 261, SLH 2000.

LOCATION:

Portion of Government lands located seaward of (1) 4-7-030:016 situated at Kaneohe, Koolaupoko, Oahu, as shown on the attached map labeled Exhibit A.

AREA:

Seawall and fill encroachment - 674 square feet, more or less.
Pier - 450 square feet, more or less,

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution: YES _____ NO x

EXHIBIT "B"

ITEM D-25

As Amended
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

August 24, 2001. [Signature]

CURRENT USE STATUS:

Unencumbered.

CHARACTER OF USE:

Easement - seawall and fill encroachment.
Lease - private residential noncommercial pier.

COMMENCEMENT DATE:

Easement - to be determined by the Chairperson.
Lease - July 13, 2001 (Decided by the Board on July 13, 2001,
Item D-32)

CONSIDERATION:

Easement - to be determined by staff appraiser
Lease - to be determined by staff appraiser according to the
methodology for Kaneohe Bay Pier Amnesty Program
approved by the Board on 2/23/2001 (agenda Item D-7);
subject to review and approval by the Chairperson.

TERM:

Fifty-five (55) years for both the lease and easement.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The subject property was portion of a fish pond, which was filled prior to 1952 to create the subdivision. The seawall existed prior to enactment of land use law. Observation by staff during the site visit supported the applicants' claim that the structure and fill encroachment were in existence before 1964.

The Board on July 13, 2001, agenda Item D-32, approved CDUA (OA-3017B) for the Kaneohe Bay Piers Amnesty Program.

DCCA VERIFICATION:

Individual, not applicable

APPLICANT REQUIREMENTS:

Applicants shall be required to

1. provide survey maps and descriptions according to State DAGS standards and at Applicants' own cost; and
2. subject to the Board approval on Recommendation 3, remit \$18,300 being the deposit for the easement and the lease.

REMARKS:

The applicants want to renovate their house. In the process of getting a building permit, their recent shoreline certification was rejected because there is a wooden pier. Further, the seawall also extends beyond the property line.

Coastal Land Program (CLP) staff has visited the site. There is no sandy beach seaward of the shoreline. The tidal area is a mudflat. It appears that public access is non-existent in the area. Removal of the seawall would be inconsequential since there is no beach in the vicinity. Public recreation in the form of boating may take place offshore of the parcel. The public access would not be enhanced by removal of the encroachment. CLP's staff determined that the issuance of an easement for the seawall and fill area would have no adverse impacts on natural resources, including beach resources.

Act 261, SLH 2000 allows the Board to lease by direct negotiation submerged lands for private residential noncommercial piers, deletes subsection 171-36(a)(9), HRS, which required posting of signs on piers to allow public use, and eliminates the requirement to obtain prior approval of Governor and Legislature for leasing of noncommercial piers.

In order to expedite the process of obtaining a shoreline certification and a building permit, it is intended to collect a deposit, being the estimated amount of the consideration for the lease and the easement, from the applicant. Upon receipt of the deposit, the shoreline certification can be proceeded and the staff will be working on the documentation for the lease and easement. Staff appraiser estimated the consideration of the pier and the seawall to be \$7,107 and \$11,072 respectively. Staff recommends that the Board authorize the department to collect from the applicants a deposit of \$18,300, being the estimate for the one time payment of the lease and easement (\$18,179) and other charges. Upon execution of documents, the deposit will be applied towards the consideration and any other charges. Any difference will be reimbursed to the applicants and vice versa. Applicants will be asked to remove the encroachment or forfeit the deposit should they fail to execute the documents. Further enforcement action will be pursued if the encroachment is not removed by the applicants.

Since the seawall and the fill area encroached into the State's land without proper authorization, staff recommends the Board to impose a fine of \$500 for the encroachment upon public lands pursuant to Section 171-6(12) HRS.

Staff did not solicit comments from other agencies, other than the CLP staff within the department because the proposed use is the same as compared to the existing use.

Applicants have not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

RECOMMENDATION: That the Board

1. Subject to the applicants fulfilling all of the applicant requirements listed above, authorize the issuance of a 55-year term non-exclusive easement for seawall and fill encroachment purposes to James Stanley Berry and Mari Ito Berry, husband and wife, as Tenants by the Entirety, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current term easement document form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Subject to the applicants fulfilling all of the applicant requirements listed above, authorize the issuance of a 55-year lease for private residential noncommercial pier to James Stanley Berry and Mari Ito Berry, husband and wife, as Tenants by the Entirety, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current Kaneohe Bay lease document form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Authorize the Department to accept a deposit in the amount of \$18,300 from the applicants pursuant to the conditions set forth in the Remarks Section above in relation to the issuance of a 55 years lease for the private residential noncommercial pier and a 55 years non-exclusive easement for the footing of seawall purposes.
4. Impose a fine of \$500 for the encroachment (i.e. the seawall and the fill area) upon public lands without Government authorization pursuant to Section 171-6(12) HRS.

August 24, 2001

Respectfully Submitted,

Barry Cheung
Barry Cheung
Project Development Specialist

APPROVED FOR SUBMITTAL:

GILBERT S. COLOMA-AGARAN
GILBERT S. COLOMA-AGARAN, Chairperson

APPROVED AS AMENDED. At the request of the applicant, the Board approved allowing the applicant to pay \$6,100 immediately, \$5,600 applied to the deposit and \$500 for the fine. The balance of \$12,700 will be due 6 months from the date of the Board meeting.

